

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

And

NATURAL RESOURCES DEFENSE  
COUNCIL, INC. AND SIERRA CLUB,

Intervenor-Plaintiffs,

v.

DTE ENERGY COMPANY AND  
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.  
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven Whalen

**DEFENDANTS' REPLY IN SUPPORT OF MOTION  
FOR EXPEDITED BRIEFING AND CONSIDERATION**

Defendants DTE Energy Company and Detroit Edison Company (collectively, "Detroit Edison") respectfully submit this Reply in Support of Motion for Expedited Briefing and Consideration of their Motion to Compel Plaintiff's Compliance with Rules 33 and 34 of the Federal Rules of Civil Procedure. In its response, Plaintiff ("EPA") states Detroit Edison argued "for the first time" in its April 8, 2011 Motion to Compel that EPA failed to produce documents as they were kept in the normal course of business, and that EPA needs more time to "gather the required information" to respond. Doc. No. 89 at 1. As Plaintiff knows, however, Detroit Edison first objected to the form of EPA's production on March 18 and continued to do so in subsequent communications. Doc. No. 87 at 7-9. EPA should have been prepared for the

argument, particularly when EPA's practice of dumping documents on defendants in NSR cases was first rejected over a decade ago. *Id.* at 10-11.

EPA's statement that Detroit Edison "waited months to file its motion" also requires clarification. In accordance with Practice Guidelines for the Honorable Judge Friedman and the Local Rules of the Court, the parties exchanged detailed correspondence on March 18, 24, 31, and April 4, and held meet and confer sessions on April 4 and 8, in an effort to narrow the areas of disagreement. *Id.* at 7-9. These efforts proved successful in many respects. Moreover, EPA first claimed that its productions met the business records option under Rule 34(b)(2)(e)(i) less than three weeks ago. *Id.* at 8. At that time, EPA did not provide information to support that new claim, and Detroit Edison wanted to determine the basis for it before filing a motion to compel. After further investigation and communications from EPA dated as recently as April 6, it became evident to Detroit Edison that EPA had not produced the documents as they were kept in the normal course of business. Detroit Edison thus did not wait months to file its Motion to Compel; rather, it complied with the Practice Guidelines and the Local Rules of this Court and then filed its Motion to Compel.

For these reasons and for the reasons stated in its initial brief, Detroit Edison's Motion for Expedited Briefing and Consideration should be granted. In the alternative and in the interest of judicial efficiency and cost savings, Detroit Edison suggests that the Court continue the April 20, 2011 hearing on Detroit Edison's Motion for Protective Order to a date after the Motion to Compel has been fully briefed so that the Motion for Protective Order and Motion to Compel can be heard at the same time.

Respectfully submitted, this 13th day of April 2011.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2011, the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING AND CONSIDERATION** was served electronically only on the following attorneys of record in accordance with an agreement reached among the parties:

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